

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ABIGAIL SMITH/ALL OTHERS SIMILARLY  
SITUATED,

UNPUBLISHED  
August 19, 2014

Plaintiff-Appellant,

v

GLENMARK GENERICS, INC., USA,

No. 315898  
Jackson Circuit Court  
LC No. 12-002794-CZ

Defendant-Appellee.

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Before: SAAD, P.J., and OWENS and K.F. KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order, which granted defendant's motion for summary disposition thereby dismissing plaintiff's claim for unjust enrichment. We affirm.

Defendant sells and distributes certain oral contraceptives to wholesalers, distributors, and retail chains in the United States, but it does not manufacture or package them. According to defendant, its customers then sell or distribute the contraceptives to retail pharmacies who then sell them to individual consumers. In February 2012, defendant recalled seven lots of oral contraceptives after receiving isolated reports that some of the packs had been mismarked such that the weekly tablet orientation was reversed. Defendant alleged that it sought to remedy the problem by directing patients to return the product to their respective pharmacies for replacement or reimbursement. Defendant alleged that it would then resolve any reimbursement issues with the wholesalers and distributors—their direct customers. Nonetheless, plaintiff filed a class action complaint against defendant, alleging among other things,<sup>1</sup> that defendant had been unjustly enriched. Defendant moved for summary disposition, which the trial court granted, finding that plaintiff was required to show that defendant received a direct benefit from her, and that because plaintiff did not purchase the product directly from defendant, she could not maintain a claim for unjust enrichment.

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<sup>1</sup> Plaintiff agreed to dismiss her other claims in response to defendant's motion for summary disposition, and as such, they are not at issue in this appeal.

On appeal, plaintiff argues that the trial court erred by finding that defendant must directly benefit from plaintiff to establish a claim for unjust enrichment. “Whether a claim for unjust enrichment can be maintained is a question of law that we review de novo.” *Karaus v Bank of New York Mellon*, 300 Mich App 9, 22; 831 NW2d 897 (2012).

“Even though no contract may exist between two parties, under the equitable doctrine of unjust enrichment, ‘[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other.’ ” *Kammer Asphalt Paving Co, Inc v East China Twp Schs*, 443 Mich 176, 185; 504 NW2d 635(1993), quoting Restatement, Restitution, § 1, p 12. “The remedy is one by which ‘the law sometimes indulges in the fiction of a quasi or constructive contract, with an implied obligation to pay for benefits received’ to ensure that ‘exact justice’ is obtained.” *Id.* at 185-186, quoting *Detroit v Highland Park*, 326 Mich 78, 100; 39 NW2d 325 (1949). To sustain an action for unjust enrichment, plaintiff must “establish (1) the receipt of a benefit by the other party from the complaining party and (2) an inequity resulting to the complaining party because of the retention of the benefit by the other party.” *Karaus*, 300 Mich App at 22-23. However, “[b]ecause this doctrine vitiates normal contract principles, the courts employ the fiction with caution.” *Kammer*, 443 Mich at 186 (quotation marks and citation omitted).

We conclude that the trial court did not err by determining that the first element of unjust enrichment requires a finding that defendant directly benefited from plaintiff, and that the facts of this case did not support such a finding. Customarily, our courts only employ the doctrine of unjust enrichment in cases where the defendant directly receives a benefit from the plaintiff. See e.g., *Kammer*, 443 Mich at 179, 187-188 (finding unjust enrichment where the defendant and the plaintiff were in direct contact with one another while the plaintiff performed work at facilities owned by the defendant and the facts clearly show that the defendant benefited directly from the plaintiff’s work); *Morris Pumps v Centerline Piping, Inc.*, 273 Mich App 187, 197; 729 NW2d 898 (2006) (finding unjust enrichment where the defendant received a benefit from the plaintiff by retaining and using the plaintiff’s materials); *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003) (noting that to maintain a claim for unjust enrichment the defendant must receive a benefit from the plaintiff). Notably, caselaw does not specifically state that the benefit must be received *directly* from the plaintiff, but these decisions make it clear that it must. This is particularly true where emphasis is placed on the fact that the defendant must receive a benefit *from* the plaintiff, and where the facts show that a benefit received indirectly is not enough to establish a claim for unjust enrichment. See, e.g., *Karaus*, 300 Mich App at 24. In this case, the facts show that defendant did not receive a direct benefit from plaintiff. Defendant did not sell the contraceptives directly to plaintiff, and plaintiff admitted that she did not purchase the contraceptives from defendant, but rather from a pharmacy. Therefore, the trial court did not err by granting summary disposition for defendant and dismissing plaintiff’s claim.

Affirmed.

/s/ Henry William Saad  
/s/ Donald S. Owens  
/s/ Kirsten Frank Kelly